

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

IN THE MATTER OF:)	AGREEMENT FOR PAYMENT OF
)	RESPONSE COSTS
CARGILL INCORPORATED,)	
)	U.S. EPA Region 9
South Bay Asbestos Area)	Docket No. 2000-10
Superfund Site,)	
San Jose, California)	PROCEEDING UNDER SECTION
)	122(h)(1) OF CERCLA, 42.U.S.C.
)	§ 9622(h)(1)
Settling Party.)	

ORIG
SIGN.

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I. JURISDICTION

1. This Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 6922(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D and redelegated to the Director, Superfund Division, EPA Region IX.

2. This Agreement is made and entered into by EPA and the Cargill Incorporated ("Settling Party"). Settling Party consents to and will not contest EPA's jurisdiction to enter into this Agreement or to implement or enforce its terms.

II. BACKGROUND

3. This Agreement concerns the South Bay Asbestos Area Superfund Site ("Site") located in San Jose, California. EPA alleges that the Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604.

5. In performing this response action, EPA incurred response costs at or in connection with the Site.

6. EPA alleges that Settling Party is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for response costs incurred at or in connection with the Site.

7. A subsidiary of Settling Party, Leslie Salt Company, owned the Subject Property while it was operated as a landfill. Leslie Salt Company was merged into Cargill Incorporated in 1991.

8. EPA and Settling Party desire to resolve the alleged civil liability of Settling Party and Leslie Salt Company for Response Costs without litigation and without the admission or adjudication of any issue of fact or law.

III. PARTIES BOUND

9. This Agreement shall be binding upon EPA and upon Settling Party and its successors and assigns. Any change in ownership or corporate or other legal status of Settling Party, including but not limited to, any transfer of assets or real or personal property, shall in no way alter Settling Party's responsibilities under this Agreement. Each signatory to this Agreement certifies that he or she is authorized to enter into the terms and conditions of this Agreement and to bind legally the party represented by him or her.

IV. DEFINITIONS

10. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Agreement or in any appendix attached hereto, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.

b. "Agreement" shall mean this Agreement and any attached appendices. In the event of conflict between this Agreement and any appendix, the Agreement shall control.

c. "Day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

e. "Interest" shall mean interest at the current rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

f. "Paragraph" shall mean a portion of this Agreement identified by an arabic numeral or a lower case letter.

g. "Parties" shall mean EPA and the Settling Party.

h. "Response Costs" shall mean all costs, including but not limited to direct and indirect costs, including interest,

that EPA or the U.S. Department of Justice on behalf of EPA has incurred, has paid or will pay at or in connection with the Site.

i. "Section" shall mean a portion of this Agreement identified by a roman numeral.

j. "Settling Party" shall mean Cargill Incorporated.

k. "Site" shall mean the South Bay Asbestos Area Superfund site, encompassing approximately 550 acres, located in the Alviso District of the City of San Jose and depicted more clearly on the map included in Appendix A.

l. "Subject Property" shall mean that property owned by Settling Party that lies within the boundaries of the Site. A diagram of the Subject Property is included as Appendix B.

m. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

V. REIMBURSEMENT OF RESPONSE COSTS

11. Within 30 days of the effective date of this Agreement, Settling Party shall pay to the EPA Hazardous Substance Superfund \$50,000 in reimbursement of Response Costs.

12. Payment shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check shall reference the name and address of the party making payment, the Site name, the EPA Region and Site/Spill ID Number 09-01 and the EPA docket number for this action, and shall be sent to:

EPA Region IX
Attn: Superfund Accounting
P.O. Box 360863M
Pittsburg, PA 15251

13. At the time of payment, Settling Party shall send notice that such payment has been made to:

Eric Yunker
U.S. EPA Region IX
75 Hawthorne Street
San Francisco, CA 94105
SFD-7-3

and to:

Kara Christenson
U.S. EPA Region IX
75 Hawthorne Street
San Francisco, CA 94105
ORC-2

VI. FAILURE TO COMPLY WITH AGREEMENT

14. In the event that any payment required by Paragraph 11 is not made when due, Interest shall continue to accrue on the unpaid balance through the date of payment.

15. If any amounts due to EPA under Paragraph 11 are not paid by the required date, Settling Party shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 14, \$1,000 per violation per day that such payment is late.

16. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made in accordance with Paragraphs 12 and 13.

17. Penalties shall accrue as provided above regardless of whether EPA has notified the Settling Parties of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after performance is due, or the day a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Agreement.

18. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to EPA by virtue of Settling Party's failure to comply with the requirements of this Agreement, if Settling Party fails or refuses to comply with any term or condition of this Agreement, it shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States, on behalf of EPA, brings an action to enforce this Agreement, Settling Party shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

19. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any

portion of the stipulated penalties that have accrued pursuant to this Agreement.

VII. COVENANT NOT TO SUE BY EPA

20. Except as specifically provided in Paragraph 21 (Reservations of Rights by EPA), EPA covenants not to sue Settling Party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Response Costs. This covenant shall take effect upon receipt by EPA of all amounts required by Section V (Reimbursement of Response Costs) and Section VI, Paragraph 14 (Interest on Late Payments). This covenant not to sue is conditioned upon the satisfactory performance by Settling Party of its obligations under this Agreement. This covenant not to sue extends only to Settling Party and does not extend to any other person.

VIII. RESERVATIONS OF RIGHTS BY EPA

21. The covenant not to sue by EPA set forth in Paragraph 20 does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Agreement is without prejudice to, all rights against Settling Party with respect to all other matters, including but not limited to:

a. liability for failure of Settling Party to meet a requirement of this Agreement;

b. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site;

c. liability for future disposal of a hazardous substance, pollutant, or contaminant at the Site, other than as provided in the ROD;

d. criminal liability; and

e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

22. Nothing in this Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a signatory to this Agreement.

IX. COVENANT NOT TO SUE BY SETTLING PARTY

23. Settling Party agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Response Costs or this Agreement, including but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims arising out of the response actions at the Site for which the Response Costs were incurred; and

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Response Costs.

24. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

25. Nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Agreement. EPA and Settling Party each reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

26. EPA and Settling Party agree that the actions undertaken by Settling Party in accordance with this Agreement do not constitute an admission of any liability by Settling Party. Settling Party does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Agreement, the validity of the facts or allegations contained in Section II of this Agreement.

27. EPA and Settling Party agree that Settling Party is entitled, as of the effective date of this Agreement, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this

Agreement. The "matters addressed" in this Agreement are Response Costs.

28. Settling Party agrees that with respect to any suit or claim for contribution brought by it for matters related to this Agreement, it will notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Settling Party also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Agreement, it will notify EPA in writing within 10 days of service of the complaint or claim upon it. In addition, Settling Party shall notify EPA within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Agreement.

29. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Party shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case, provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue by EPA set forth in Paragraph 20.

XI. RETENTION OF RECORDS

30. Until five (5) years after the effective date of this Agreement, Settling Party shall preserve and retain all records and documents now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Subject Property or to the liability of any person for response actions conducted and to be conducted at the Subject Property, regardless of any corporate retention policy to the contrary.

31. By signing this Agreement, Settling Party certifies individually that, to the best of its knowledge and belief, it has:

a. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site, after

notification of potential liability or the filing of a suit against the Settling Party regarding the Site; and

b. fully complied with any and all EPA requests for information regarding the Site pursuant to sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§9604(e) and 9622(e).

XII. NOTICES AND SUBMISSIONS

32. Whenever, under the terms of this Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Agreement with respect to EPA and Settling Party.

Eric Yunker
U.S. EPA Region IX
75 Hawthorne Street
San Francisco, CA 94105
SFD-7-3

As to Settling Party:

LaRaye M. Osborne
Cargill, Incorporated
Law Department/24
15407 West McGinty Road
Wayzata, MN 55440-5624

XIII. INTEGRATION/APPENDICES

33. This Agreement and its appendices constitute the final, complete and exclusive agreement and understanding among the Party with respect to the settlement embodied in this Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Agreement. The following appendix is attached to and incorporated into this Agreement:

Appendix A: a map of the South Bay Asbestos Area Superfund Site.

Appendix B: a map of the Subject Property.

XIV. PUBLIC COMMENT

34. This Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

XV. ATTORNEY GENERAL APPROVAL

35. The Attorney General or her designee has approved the settlement embodied in this Agreement in accordance with Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1).

XVI. EFFECTIVE DATE

36. The effective date of this Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 34 has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Agreement.

IT IS SO AGREED:

U.S. Environmental Protection Agency

By: Keith Takata
Keith Takata, Director
Superfund Division

9-14-00
Date

THE UNDERSIGNED SETTLING PARTY enters into this Agreement in the matter of U.S. EPA Docket Number 2000-10, relating to the South Bay Asbestos Area Superfund Site:

FOR CARGILL INCORPORATED:

LaRaye M. Osborne

[Name]

Section Head & Senior Attorney

[Title]

15407 McGinty Road West, Wayzata, MN 55391

[Address]

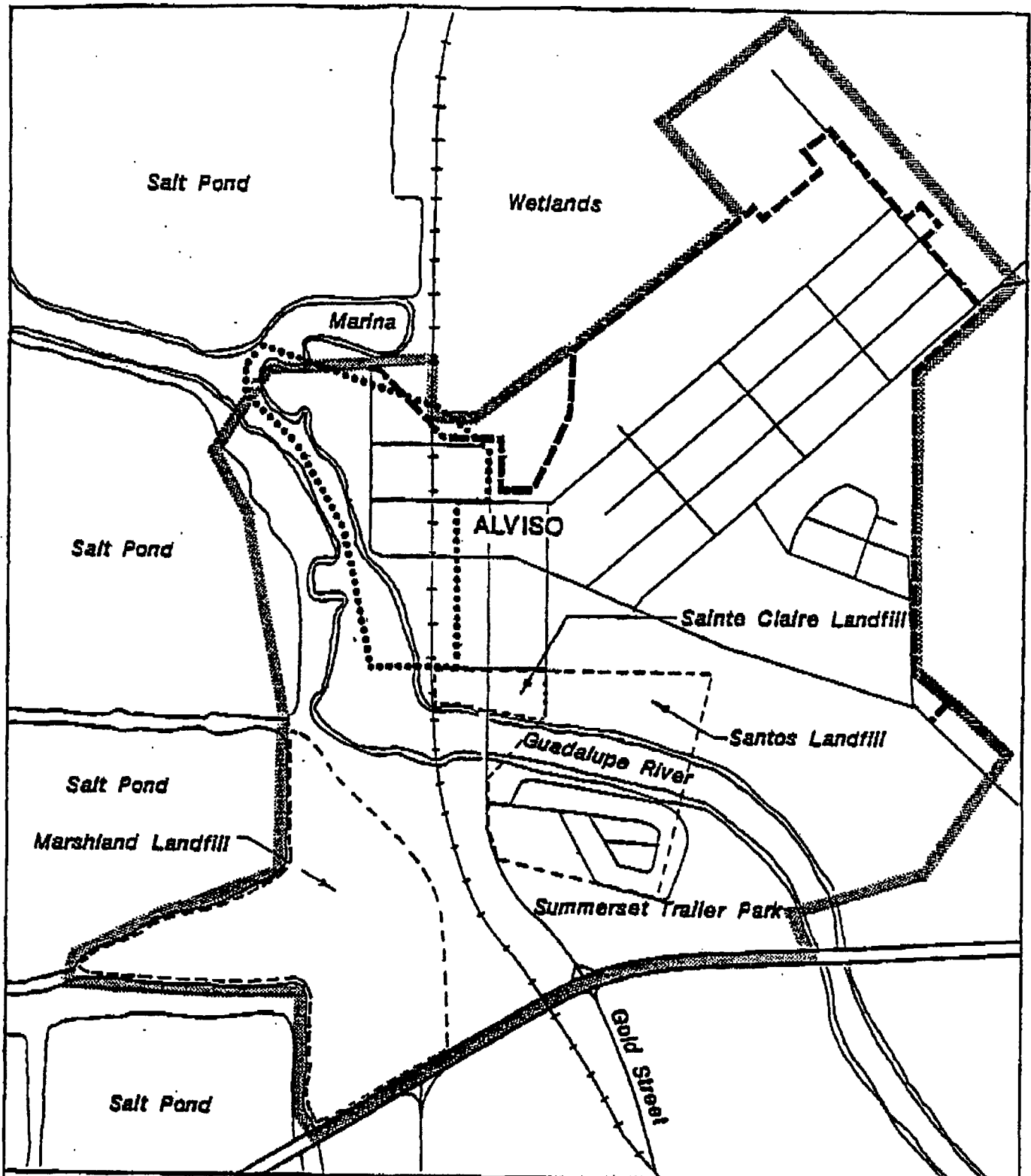
By:

LaRaye Osborne

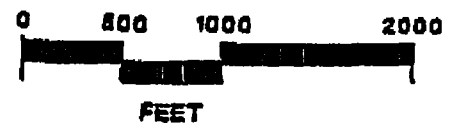
[Signature]

August 8, 2000

[Date]

**LEGEND**

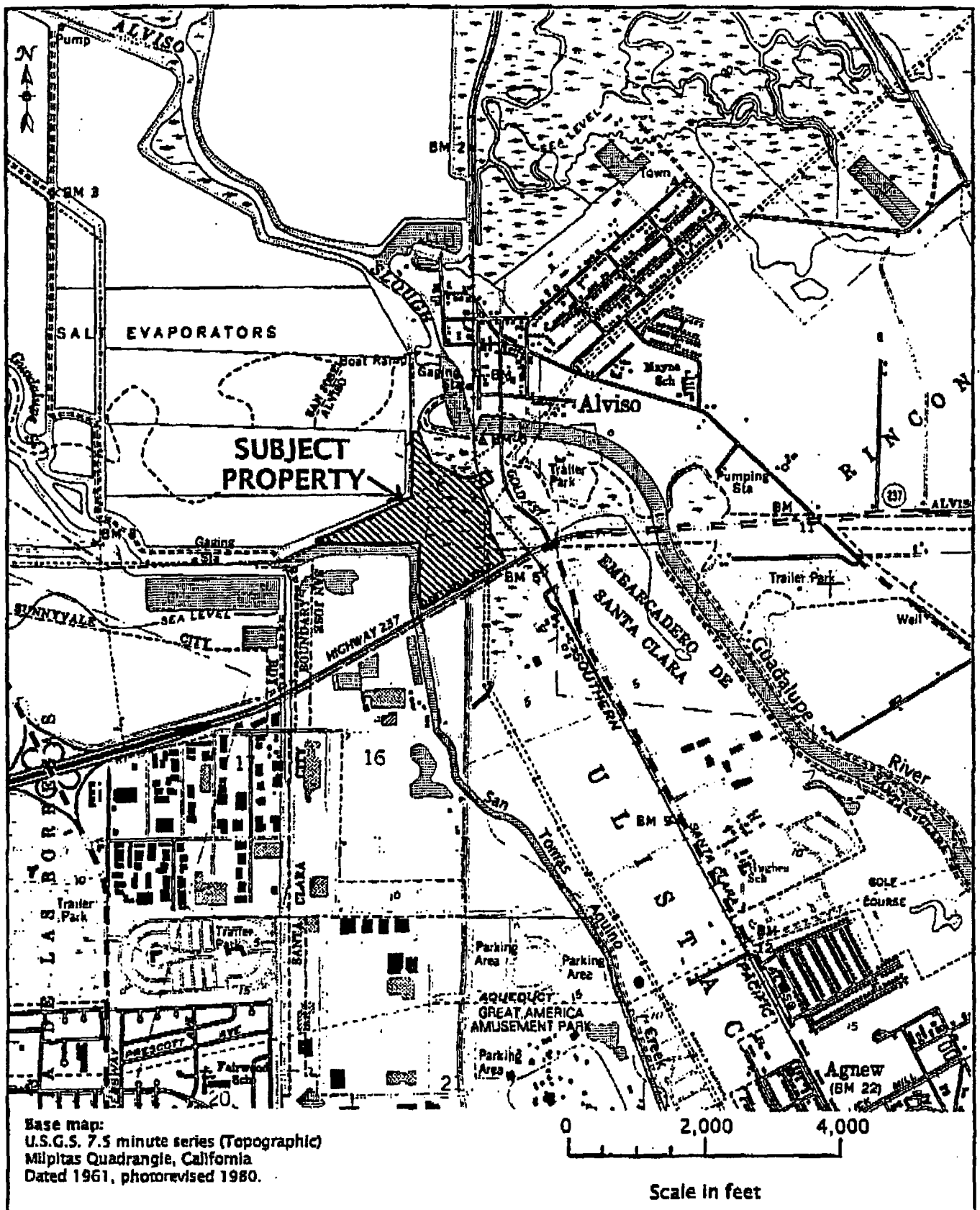
- Historic District Boundary
- Site Boundary
- Landfill Boundary
- +—+— Existing Ring Levee



Project No.	South Bay Asbestos Site
288-R11	Camp Dresser & McKee Inc.

SITE LOCATION MAP
Appendix A

Figure
1-2



Explanation



Subject Property

Appendix B. Map of the Subject Property (Cargill, Inc.)